

**REMARKS**

In the Office Action the Examiner noted that claims 1-10 are pending in the application. The Examiner rejected claims 1 and 5-10, and objected claims 2-4. The Examiner's rejections are traversed below, and reconsideration of all rejected claims is respectfully requested.

**Examiner's Response to Arguments**

On pages 13-14 of the Office Action the Examiner provided a Response to Arguments. The Applicants respectfully submit that the Examiner has not provided any rebuttal for many of the arguments presented in the Amendment filed on February 12, 2007. However, this absence of rebuttal will be addressed in the next section of this Response. The Applicants respectfully submit the following comments regarding the Examiner's Response to Arguments.

Regarding the Applicants' thorough traversals and evidence that it is unreasonable to combine the Buettgenbach and Bjorner references, the Examiner, while seemingly acknowledging that the traversals are not being answered in a thorough fashion (the Examiner simply stated that the previously made arguments were reiterated), only alleged that "having products delivered to the delivery recipient, as in claim 1, does not require that the products be delivered to the delivery recipient at his home, as opposed to at a Will-Call Center; and also, that claim 1 merely required presenting a series of screens, without specifying precisely what is done after the screens are presented."

As to the Examiner's allegation that having products delivered to the delivery recipient does not require that the products be delivered to the delivery recipient at his home, as opposed to a Will-Call Center, the Applicants respectfully submit that this allegation does not accurately reflect the Applicants' arguments. The Applicants respectfully point out that claim 1 recites "presenting a screen which notifies a delivery recipient of the products, and accepting a designation of delivery terms on the screen", and "presenting said delivery recipient with a screen displaying a list of the products scheduled to be delivered to said delivery recipient." Therefore, while it may not be necessary to deliver the product to the delivery recipient's home, it is necessary that the delivery recipient provides the delivery terms, and therefore not a Will-Call Center, because the delivery recipient necessarily will receive the delivery (at home or otherwise, but delivered to the recipient). Therefore, the Applicants respectfully submit that the Examiner's Response is in error.

As to the Examiner's allegation that claim 1 merely required presenting a series of screens, without specifying precisely what is done after the screens are presented, the Applicants respectfully submit that the Examiner's point, even if assumed *arguendo*, has no bearing on the fact that the actual delivery recipient in the cited reference does not perform the task (providing delivery terms) performed by the recited delivery recipient in the present application. Therefore, the Applicants respectfully submit that the Examiner's Response regarding this point is moot.

Regarding the Applicants' arguments that there is no motivation to combine other references, the Examiner offered no rebuttal other than standard boilerplate, and stated that the motivation of the Hartman and Mandler references were set forth in his arguments. The Applicants respectfully submit that this is not a proper rebuttal of the arguments.

#### Request For Issuance of New Non-Final Office Action

In the previous section of this Amendment the Applicants identified some of the previously submitted arguments which the Examiner has failed to acknowledge or answer, and further previously submitted and non-answered arguments will be identified in this section. As noted in at least MPEP 707.07(f), the Examiner is required to answer and address all traversals. This requirement is in addition to any repetition of a previously held position and is required to allow the Applicants a chance to review the Examiner's position as to these arguments and to clarify the record for appeal. The Applicants respectfully submit that the current action issued by the Examiner, which apparently completely ignores these identified arguments, does not allow the Applicants to review the Examiner's position in a thorough manner.

Additionally, and as further noted in MPEP 707.07(f), a failure of the Examiner to address the Applicants' traversals can be deemed a failure to rebut these arguments so as to admit that the arguments have overcome the rejection. At the very least, the failure to address the Applicants' traversals would render the Examiner's decision to again reject the claims arbitrary and capricious and invalid under the Administrative Procedures Act, 5 U.S.C. § 706, the standard under which such rejections are reviewed in view of *Dickinson v. Zurko*, 527 U.S. 150, 50 USPQ2d 1930 (1999).

As such, since the Examiner has not addressed the above identified Applicants' traversals presented in the Amendment of February 12, 2007, as well as a substantial number of

traversals made in the Amendment of August 4, 2006, it is respectfully requested that the Examiner withdraw the current Office Action and issue a new Non-Final Office Action addressing these traversals in a manner which offers support drawn from the cited references, or, in the alternative, withdraw the rejections of the subject claims.

Specifically, the Applicants respectfully submit that the Examiner issue a non-final action that answers the following previously submitted and not answered arguments. This should be in addition to the acknowledgment and answer of the arguments presented in the remainder of this Amendment. All of the following arguments, which have not been answered or acknowledged by the Examiner, are taken verbatim from the previously filed Amendment.

The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged traversal:

In response to the Applicants' assertion that Buettgenbach does not disclose or suggest the delivery recipient designating the time and date of delivery, the Examiner tacitly acknowledged this deficiency by stating that Bjorner does teach a delivery recipient designating the date and time of delivery. The Examiner went on to state that this is not incompatible with the system and method of Buettgenbach, since a customer might want to specify the date and time of delivery to a community pickup center.

The Applicants respectfully submit that this element of Bjorner is apparently incompatible with Buettgenbach. The entire purpose of the system disclosed in Buettgenbach, and which is discussed throughout the reference, is to allow a consumer to have goods delivered to a community pickup center so that the consumer is freed from the expense, risk, and inconvenience of scheduled delivery. Paragraph [0006], for example, of Buettgenbach states the following:

Current systems for shipping and delivering products are often unsatisfactory. Home delivery is expensive, risky, and inconvenient. Buyers find it inconvenient to stay home to receive a package of the ordered good. Often, no one is at home to receive the package and the package may be left in a mailbox. Further, if the mailbox is not large enough to hold the package, the package may be left dangerously exposed in a public place such as a doorstep, or delivery of the package may be postponed and scheduled for re-delivery. Perishable products, such as food, are particularly susceptible to delays and delivery methods involving unsuitable forms of storage.

Therefore, Buettgenbach developed the system of delivering the goods to a Will-Call

center so that the consumer can pick up the goods at his or her leisure. This eliminates the problems discussed above, and the consumer is free to not be involved in the delivery particulars. The Examiner stated that "a customer might want to specify the date and time of delivery to a community pickup center." However, this is in direct contradiction to the purpose of the Buettgenbach system. If a customer indeed wanted to specify the date and time of delivery, then that customer obviously would be available to receive the product at that scheduled time. If that is the case, then there would be no reason for the customer to add the inconvenience of going to the pickup center to obtain the good, when he or she could simply receive it at home at that scheduled time.

Therefore, the Applicants respectfully submit that Buettgenbach obviously teaches away from any combination with Bjorner. As such, there is no valid motivation for the combination of the two references. Thus, the Applicants respectfully submit that there can be no valid §103 rejection based on the combination of those references.

The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged, traversal:

The Applicants also argued the following in the amendment of August 4, 2006:

Further, claim 1 of the present application, as amended, also recites "presenting a screen which accepts delivery applications of the products to a provider of the products, and accepting applications on the screen for delivery of said products from the provider of said products." In other words, the product provider is presented a delivery application which is used to request delivery of an ordered product. These applications are assigned ID's which are used to allow a recipient to designate delivery terms for the ordered products. The Applicants respectfully submit that Buettgenbach also does not disclose or suggest at least these features of claim 1.

Buettgenbach discloses a method of delivering products ordered from a vendor that avoids the typical home delivery problems of excessive cost, risk, and inconvenience (Paragraph [0006]). The method includes ordering goods from vendors that are associated with pickup centers, or will-call centers, that are established in relatively high-traffic locations such as employment sites, apartment buildings, universities, gated communities, and retail locations (Paragraph [0031]). In other words, the delivery is made to a publicly used place other than the private residence of the buyer.

The buyer in Buettgenbach places an order with a vendor, and designates the pickup center and identifies a recipient (Paragraph [0038]). The Examiner has apparently characterized the designation of the pickup center and the recipient

identification as "delivery terms." The vendor then processes the order and ships the order as a delivery to the pickup center using any appropriate shipping method (Paragraph [0047]). The vendor notifies the pickup center that the order has been shipped and that delivery through that pickup center has been specified (Paragraph [0048]). In other words, the vendor must make all the shipping arrangements to the pickup center, as per the conventional method.

This is in direct contrast with the features recited in claim 1 of the present application. While the Examiner stated that Figure 1 (as well as Paragraphs [0031], [0037], and [0038]) of Buettgenbach discloses a screen which accepts applications for delivery of said products from a provider of said products, the Applicants respectfully submit that Figure 1, and the method discussed in the cited paragraphs, clearly indicates that the screen is presented to the buyer, and is used to identify vendors that are associated with a particular pickup center. After contacting one of the associated vendors to order the product, and subsequently ordering the product, the vendor then handles delivery of the product to the designated pickup center by conventional shipping choices and methods in Buettgenbach. However, with the method claimed in claim 1 of the present application, the product provider can simply apply for delivery of the product, and the buyer can then designate delivery terms according to the buyer's preferences after ordering the product, based on the delivery application, without the product provider being involved. This both increases the convenience of the user, which can designate convenient delivery terms, and for the product provider, who is removed from the delivery term determination process.

The Applicants respectfully submit that the Examiner has apparently not answered these arguments relating to the deficiencies of Buettgenbach regarding at least claim 1.

The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged, traversal:

The Examiner also stated that it "may also be observed that claim 7 does not recite that all the means must be operated by the same entity." On the contrary, the Applicants respectfully submit that claim 7 of the present application recites a device comprising the several recited means. Therefore, regardless of the entity operating any particular means, the means are all parts of the same device, or entity. As previously stated, for example, the operation which the Examiner characterized as assigning application ID's in Buettgenbach is performed by the pickup center (Paragraph [0049]). Also, the operation which the Examiner characterized as prompting a recipient to designate delivery terms is performed by the vendor. The vendor and the pickup center in Buettgenbach are not only obviously different entities, but these operations are not performed on any common device. Therefore, the Applicants maintain that claim 7 patentably distinguishes over the cited references.

The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged, traversal:

Also, the Applicants respectfully submit that the Examiner has apparently not answered the Applicant's arguments regarding the "means for accepting applications from a provider of products for delivery of said products" recited in claim 7.

The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged, traversal:

In the Amendment submitted on August 4, 2006, the Applicants also argued the following:

Further, the Applicants respectfully submit that there is no motivation to combine Buettgenbach and Mandler. The Examiner stated that "it would have been obvious to one of ordinary skill in the art...to notify the provider as claimed, for the obvious advantage, as taught in Mandler, of arranging for the shipping and delivery of ordered products." However, the Applicants respectfully submit that this is not a reasonable statement, the original order in the method of Buettgenbach is placed through the product provider. Further, in Buettgenbach the shipping and delivery is arranged by the product provider before the pickup center is notified (Paragraphs [0047]-[0048]). Therefore, the reasoning provided by the Examiner is counterintuitive, and Buettgenbach actually teaches away from the combination.

In response, the Examiner stated that Mandler does not conflict with notifying the product provider in Buettgenbach that the products have been purchased, after the step of accepting delivery terms and according to judging whether the delivery recipient is the party that ordered the products. The Examiner offered the following two bases in support of this allegation.

First, the Examiner stated that the provider's server computer might notify the provider after accepting delivery terms and judging the authenticity of the customer placing the order. The Applicants respectfully submit that this is an unreasonable assumption for several reasons. The Examiner is apparently contradicting his own basis for the motivation. To wit, the Examiner stated in the previous rejection the basis for the combination being that it would have been obvious to notify the provider for the obvious advantage of arranging for the shipping and delivery of the products. But the Examiner now states that the provider might be notified after

accepting delivery terms. In other words, the Examiner is stating that the provider should be notified of the order after the provider arranges for the shipping. This is not a logical statement. Also, the Examiner stated that Mandler discloses notifying the provider of the order, not the "authenticity" of the order. Further, it is unreasonable to state that the delivery terms of specified date and time would be scheduled before the authenticity of the order is verified.

Secondly, the Examiner stated that a deliveryman, upon delivering products to the customer (which would happen after accepting delivery terms), might judge whether the delivery recipient was the party that ordered the products (for example, by asking to see a photo ID), and then notify the provider. Again, the Applicants fail to see how this is related to notifying the provider so the provider can arrange for the shipping of the products, as the product has then already been shipped and delivered. Therefore, the Applicants maintain that there is no basis for combination of the references. As the order is placed directly with the product provider in Buettgenbach, there is no reason to modify Buettgenbach with Mandler to notify the provider of the order to arrange shipping. Mandler adds nothing to the Buettgenbach reference.

The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged, traversal:

The Applicants also submitted, in the Amendment of August 4, 2006, the following:

Also, there is no teaching in Buettgenbach that would suggest combination with Hartman or Walker. The Examiner acknowledged that Buettgenbach does not disclose or suggest a plurality of features recited in claims 8-9, but indicated that those deficiencies are cured by Hartman and Walker. The Applicants respectfully submit that, even assuming, *arguendo*, that the cited features were disclosed by Hartman and Walker, there is absolutely no motivation to combine the references.

MPEP § 2142 states that "[w]hen the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the Examiner to explain why the combination of the teachings is proper." Here, the Examiner has simply stated, with no evidence to support the assertion, that it would have been obvious to combine Buettgenbach with Walker to provide for referring to an address table and extracting the notification of the delivery recipient. The Examiner stated that it would have been obvious "to refer to an address table and extract the notification address therefrom, for the obvious advantage of delivering the article or articles to the correct address." The Applicants respectfully submit that this is an unreasonable statement, as the entire purpose of Buettgenbach is to avoid sending the products to the address of the delivery recipient, and therefore teaches away from any such provision. The Examiner is required to present actual evidence and make particular findings related to the motivation to

combine the teachings of the references. In re Kotzab, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); In re Dembiczak, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." Dembiczak, 50 USPQ2d at 1617. "The factual inquiry whether to combine the references must be thorough and searching." In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002) (citing McGinley v. Franklin Sports, Inc., 60 USPQ2d 1001, 1008 (Fed. Cir. 2001)). The factual inquiry must be based on objective evidence of record, and cannot be based on subjective belief and unknown authority. Id. at 1433-34. The Examiner must explain the reasons that one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious. In re Rouffet, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998).

While the Examiner may be attempting to characterize the pickup center itself as the delivery recipient in the rejection based on Buettgenbach and Walker, it is apparent from the recited language of claims 8-9 that the delivery recipient provides the delivery terms. This would equate with the pickup center of Buettgenbach providing the delivery terms, which is not a reasonable interpretation.

Further, Buettgenbach also teaches away from any combination with Hartman, which the Examiner stated would provide the advantage of minimizing shipping cost and purchaser confusion, or the obvious advantage of arranging for delivery recipients to make fewer trips to pick up available goods at the pickup center. There could be no purchaser confusion in Buettgenbach, because the recipient is merely notified when the package has arrived, and no confusion is possible as to which package it is. Also, there would be no logical reason for the recipient to make multiple trips to the pickup center, when he/she could merely wait until all the packages are there before picking them up. The Examiner seems to be taking the position that the recipient must pick the package up immediately, but the purpose of Buettgenbach is to allow the package to comfortably remain until the recipient has occasion to pick it up (Paragraph [0049]).

The Examiner replied, regarding the motivation to combine Walker and Buettgenbach, that there would still be motivation to find the address of the appropriate community pickup center, so as to deliver the product to the correct community pickup center.

However, the Examiner has apparently ignored the Applicants' assertion that "[w]hile the Examiner may be attempting to characterize the pickup center itself as the delivery recipient in the rejection based on Buettgenbach and Walker, it is apparent from the recited language of claims 8-9 that the delivery recipient provides the delivery terms. This would equate with the pickup center of Buettgenbach providing the delivery terms, which is not a reasonable interpretation." In other words it is the recited delivery recipient which sends the desired delivery terms. As previously discussed, the community pickup center in Buettgenbach does not provide the delivery terms, and therefore cannot be considered as the recited delivery recipient.



The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged, traversal:

Regarding the motivation to combine Buettgenbach with Hartman, the Examiner stated that the motivation of minimizing shipping costs would still apply, because it could well cost more to send multiple packages to the pickup center separately. The Examiner also stated that minimizing purchaser confusion could also still apply, because a purchaser might be uncertain as to whether a notification indicated that one of several products had arrived at the pickup center, and such uncertainty might lead to a purchaser making additional trips to pick up available products.

The Applicants respectfully submit that this is not a reasonable motivation for combination of the references. Regarding the possibility of sending multiple packages to the pickup center separately, that would entail considering the pickup center itself as the delivery recipient. As has been discussed at length in this section of this Amendment and the previously filed Amendment, the pickup center cannot be considered the delivery recipient. Thus, while the product provider may save money by shipping multiple packages addressed to the pickup center together, that has no bearing on the recited "searching said storage device and delivery requests for pending deliveries with the same delivery recipient as the delivery recipient of said delivery request are extracted", as the pickup center is not the recited delivery recipient.

Also, regarding the purchaser confusion, Buettgenbach discloses sending detailed information to the customer regarding the packages delivered to the pickup center (Paragraphs [0049]-[0052]). As the information stored by the pickup center is sent to the customer as well as the vendor, it is highly obvious that the information would be so detailed as to identify the exact contents of the package. Thus, as the relayed information identifies the package absolutely, there could be no confusion on the customer's part as to what packages have or have not arrived. Therefore, there is no motivation to combine any of these references.

The Examiner also stated, regarding the customer notifications, that the messages should be correct and unambiguous, "but the Examiner is familiar enough with life's imperfections to observe that erroneous notifications to purchasers might be sent, or that purchasers, upon receiving notification that item #1234 had arrived at a Will-Call Center, might wonder whether item #1235 has arrived as well, even if item #1235 had not been explicitly mentioned."

The Applicants fail to see how the combination of Hartman with Buettgenbach would

solve "life's imperfections". It stands to reason that said imperfections would also apply to the system of Hartman. In fact, these imperfections may be compounded by Hartman, and result in several packages being combined and sent to the wrong customer. This would seem to teach away from the combination of the references. The Applicants also respectfully submit that a consumer savvy enough to order the product online and designate a community pick-up center as the delivery site would most likely be savvy enough to be able to glean the exact delivery information from such a detailed message as described in Buettgenbach. Additionally, item #1234 and item #1235 may very well be from different vendors, and therefore would not be available for combination from the vendors through the Hartman method.

Therefore, as explained above, the Applicants respectfully submit that the references do not disclose, suggest, nor even contemplate the discussed claims of the present application, and further there is no motivation for the combination of any of these references. Thus, the Applicants respectfully submit that the discussed claims patentably distinguish over the cited references.

The Applicants respectfully request that the Examiner answer the following previously submitted, and heretofore unacknowledged, traversal:

Further, the Applicants respectfully submit that there is no motivation to combine either Webvan or Bjorner with Hartman. With the services of Webvan and Bjorner, delivery of products is scheduled by the purchaser for specific times. There is no further aggregation of any separate orders to be done with these services, because to do so would violate the customers' delivery window. Thus, the combination of the references is not proper.

#### Claim Rejections Under 35 USC §102

On pages 2-3 of the Office Action the Examiner rejected claim 10 under 35 U.S.C. §102(a) as being anticipated by the anonymous article "Omaha, Neb.-Based Start-Up Firm to Offer Online Grocery Service" (hereinafter referred to as "Omaha"). The Applicants respectfully traverse the Examiner's rejection of this claim.

Claim 10 of the present application, as amended, recites "accepting, at a computer of a delivery service, delivery terms of the item wherein said delivery terms are entered by a prospective recipient of the item after the item has been ordered from a third-party product

provider.” In other words, the party providing the delivery service is different from the party providing the product. The Applicants respectfully submit that Omaha does not disclose or suggest at least these features of claim 10.

Omaha discloses a system in which a consumer shops in a virtual supermarket online. The consumer picks the products he or she wishes to order, add them to the shopping cart, and then type in a credit card number and the time they want the groceries delivered. However, in Omaha, the product provider and the delivery service are the same party, because the consumer orders the product from the business (ShoppingMadeEasy.com) which delivers the product. This is in direct contrast to claim 10 of the present application, in which the recipient of the product orders the product from a third-party product provider, and then supplies the delivery terms to a delivery service. In order for a reference to anticipate a claim, the reference must teach each and every element of the claim (MPEP §2131). Therefore, since Omaha does not disclose the features recited in independent claim 10, as stated above, it is respectfully submitted that claim 1 patentably distinguishes over Omaha, and withdrawal of the §102(a) rejection is earnestly and respectfully solicited.

#### Claim Rejections Under 35 USC §103

On pages 3-6 of the Office Action the Examiner rejected claims 1 and 6 under 35 U.S.C. §103(a) as being unpatentable over Buettgenbach in view of Bjorner and official notice, and claim 7 under 35 U.S.C. §103(a) as being unpatentable over Buettgenbach in view of Bjorner. On page 6 the Examiner rejected claim 5 as being unpatentable over Buettgenbach in view of Mandler. On pages 6-8 the Examiner rejected claims 7-9 as being unpatentable over Buettgenbach in view of Hartman and Walker. The Applicants respectfully traverse the Examiner's rejections of these claims.

As discussed at length in the previous section of this Amendment, Buettgenbach does not disclose or suggest a number of features claimed in claim 1. For instance, Buettgenbach does not disclose or suggest “presenting a screen which accepts delivery applications of the products to a provider of the products, and accepting applications on the screen for delivery of said products from the provider of said products.” In other words, the product provider is presented a delivery application which is used to request delivery of an ordered product. These applications are assigned ID's which are used to allow a recipient to designate delivery terms for the ordered products. While the Examiner stated that Figure 1 (as well as Paragraphs [0031], [0037], and [0038]) of Buettgenbach discloses a screen which accepts applications for delivery

of said products from a provider of said products, the Applicants respectfully submit that Figure 1, and the method discussed in the cited paragraphs, clearly indicates that the screen is presented to the buyer, and is used to identify vendors that are associated with a particular pickup center. After contacting one of the associated vendors to order the product, and subsequently ordering the product, the vendor then handles delivery of the product to the designated pickup center by conventional shipping choices and methods in Buettgenbach. However, with the method claimed in claim 1 of the present application, the product provider can simply apply for delivery of the product, and the buyer can then designate delivery terms according to the buyer's preferences after ordering the product, based on the delivery application, without the product provider being involved. This both increases the convenience of the user, which can designate convenient delivery terms, and for the product provider, who is removed from the delivery term determination process.

As also previously discussed in this Amendment, the Examiner has apparently equated the community pickup center in Buettgenbach with the delivery recipient recited in claim 1. However, it is quite clear from the recitations of claim 1 that the delivery recipient (i.e., the entity that receives the delivery of the product) designates the delivery terms. This process is not performed in Buettgenbach, wherein the delivery recipient (i.e., the community pickup center) merely receives the product, and does not designate any delivery terms.

Therefore, Buettgenbach does not disclose, suggest, nor contemplate at least these features of claim 1. Further, none of the cited references cure the deficiencies of Buettgenbach in this regard. Even for references that disclose certain delivery terms being set by the purchaser and recipient of goods, the fact that the delivery recipient in Buettgenbach is the community pickup center which does not set the terms is not changed. Therefore, it is respectfully submitted that claim 1 patentably distinguishes over the cited references.

Further, as stated in the previous section of this Amendment, there is no motivation to combine any of these references. Therefore, the Applicants respectfully submit that the §103 rejections of claims 1-10 are invalid.

Claims 5-6 depend from claim 1 and include all of the features of that claim plus additional features which are not disclosed or suggested by the cited references. Also, independent claims 7-9 recite similar features to those discussed in regard to claim 1, and which are not disclosed or suggested by the cited references. Therefore, it is respectfully submitted that claims 5-9 also patentably distinguish over the cited references.

On pages 9-11 of the Office Action the Examiner rejected claim 10 under 35 U.S.C. §103(a) as being unpatentable over “Webvan” in view of Hartman, over Bjorner in view of Hartman, and over Batchelor (“Survey – the Queens Award for Enterprise: Technology Helps Speed Delivery”) in view of Official Notice. However, as previously discussed, claim 10 recites “accepting, at a computer of a delivery service, delivery terms of the item wherein said delivery terms are entered by a prospective recipient of the item after the item has been ordered from a third-party product provider.” In both Webvan and Bjorner, the order is made from the delivery service, rather than a separate product provider. Further, this deficiency of Webvan and Bjorner is not cured by Hartman. Therefore, it is respectfully submitted that claim 10 patentably distinguishes over those cited references.

Further, the Applicants respectfully submit that there is no motivation to combine either Webvan or Bjorner with Hartman. With the services of Webvan and Bjorner, delivery of products is scheduled by the purchaser for specific times. There is no further aggregation of any separate orders to be done with these services, because to do so would violate the customers’ delivery window. Thus, the combination of the references is not proper.

Regarding Batchelor, the Examiner alleged that Batchelor teaches a method wherein said delivery terms are selected by a prospective recipient of the item. However, the Applicants respectfully submit that Batchelor merely discloses an overnight delivery system (TNT) wherein the customer can choose before 9am or before noon delivery. The Applicants respectfully submit that it is obvious to anyone skilled in the art that the customer is the sender of the product or parcel in Batchelor. As clearly stated in the reference, “It has been responsible for a chain of improvements which have speeded up the pace of parcels delivery and developed the technology to allow customers to check online or over a telephone voicemail whether their consignment has reached its destination” (3<sup>rd</sup> Paragraph, Last Sentence). Therefore, it is clearly not the recipient that is setting the delivery terms, as this is simply a parcel delivery service which allows the customer, the sender of the parcel, to specify the desired time of the morning for the overnight delivery service. Thus, Batchelor is in no way related to the method recited in claim 10, and certainly does not anticipate at least the recited feature “wherein said delivery terms are entered by a prospective recipient of the item after the item has been ordered from a product provider.” Therefore, it is respectfully submitted that claim 10 patentably distinguishes over Batchelor.

Allowable Subject Matter

On pages 11-13 of the Office Action the Examiner objected to claims 2-4 as being dependent upon a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As discussed previously in this Amendment, claim 1 patentably distinguishes over all of the cited references. Further, claims 2-4 depend from claim 1 and include all of the features of that claim plus additional features which are not disclosed or suggested by the cited references. Therefore, it is respectfully submitted that claims 2-4 also patentably distinguish over the cited references.

Summary

In accordance with the foregoing, claim 10 has been amended. No new matter has been presented. Thus, claims 1-10 remain pending and under consideration.

There being no further outstanding objections or rejections, it is respectfully submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

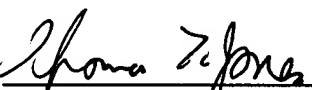
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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Date: August 30, 2007

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